

## **REMARKS/ARGUMENTS**

### **Status of the Claims**

Upon entry of the present amendment, claims 29, 33, 36-42, 51, 54-60 and 70-73 are pending.

### **Response to Restriction Requirement**

In response to the restriction requirement, Applicant elects Group I drawn to tissue adhesive compositions, with traverse. In response to the species election, Applicant elects lyophilized tissue adhesive, with traverse.

The Examiner alleges that the tissue adhesives and methods of using the tissue adhesive do not share a single general inventive concept under PCT Rule 13.1 because the claimed tissue adhesives allegedly are disclosed by Nevo, *et al.* (U.S. Patent No. 4,642,120). However, the claimed tissue adhesives are distinct from the gel disclosed in Nevo.

The Examiner has made the present restriction requirement under 35 U.S.C. §§ 121 and 372 and under PCT Rules 13.1-13.2. As the Examiner well knows, Section 121 does not provide a basis for the rejection of a claim. *See, In re Weber* 198 U.S.P.Q. 328, 332 (C. C. P. A., 1978). Here, the Examiner is effectively refusing to continue examining claims, either compositions or methods, that have been under examination throughout the prosecution of the present case because the claimed tissue adhesives allegedly are disclosed by Nevo. The Examiner appears to be making a rejection of either claims in Group I or in Group II on the basis of anticipation without having presented a *prima facie* case, and not under the authority of 35 U.S.C. § 102. Applicants respectfully assert that this is improper.

Further, Applicants respectfully submit that it would not impose an undue burden on the Examiner to Examine the compositions and method claims together, because they have already been examined together.

In view of the foregoing, the Examiner is respectfully requested to withdraw the present restriction requirement.

Appl. No. 09/486,516  
Amdt. dated January 13, 2006  
Reply to Office Action of November 14, 2005

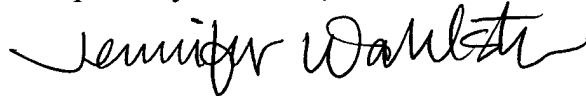
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**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,



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